TOPICS:

fiberglass air permits burden of proof

PRESIDING JUDGE:

Gibbs

PARTY REPRESENTATIVES:

Permittee, *pro se*: Premier Fiberglass

Petitioners, pro se: T. Harold & Juanita Barwick, Dianne Luke

IDEM: Jacquelyn Moore, Esq.

ORDER ISSUED:

September 9, 2004

INDEX CATEGORY:

Air

FURTHER CASE ACTIVITY:

[none]

STATE OF INDIANA)	_	E THE INDIANA OFFICE OF ONMENTAL ADJUDICATION
COUNTY OF MARION)	LIVIN	
IN THE MATTER OF:)	
)	
OBJECTION TO THE ISSUANCE (OF)	
SIGNIFICANT SOURCE MODIFIC	ATION)	
T-039-17616-0036) (CAUSE NO. 04-A-J-3329
PREMIER FIBERGLASS)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

This constitutes notice of a Final Order. This matter having come before the Court on the Final Hearing of the Petition for Administrative Review by T. Harold and Juanita Barwick and Dianne Luke on September 3, 2004; and the Environmental Law Judge having considered the evidence presented at the hearing and being duly advised in the premises, now makes the following findings of fact, conclusions of law and Order:

Findings of Fact

- 1. On April 8, 2004, the Indiana Department of Environmental Management (IDEM) renewed the Part 70 air permit #T039-17616-00336 (the "Permit") for Premier Fiberglass located at 55080 Phillips Street, Elkhart, Indiana (the "Facility").
- 2. On April 23, 2004, the Petitioners, T. Harold and Juanita Barwick ("the Barwicks"), Dianne Luke, Nila Wertz, Sharon Ashbury, Antoinette Minichillo, Kimberly Brant, Brooke Schodey, Susan Sailor, Candy Kirchner, Mark Nawal, Keith Platt, Lori Dinn, and Thomas Barber filed Petitions for Review.
- 3. On May 20, 2004, this Court ordered the Petitioners to file Amended Petitions, which complied with the requirements in 315 IAC 1-3-2 on or before June 23, 2004. Nila Wertz, Sharon Ashbury, Antoinette Minichillo, Kimberly Brant, Brooke Schodey, Susan Sailor, Candy Kirchner, Mark Nawal, Keith Platt, and Lori Dinn, failed to file Amended Petitions as ordered. On June 23, 2004, the Barwicks, on behalf of Dianne Luke and Thomas Barber, filed an Amended Petition.
- 4. On June 28, 2004, a Notice of Proposed Default was sent to the Petitioners who failed to file amended petitions. Due to their failure to respond to the Notice, the Court dismissed these Petitioners on July 9, 2004.
- 5. On July 2, 2004, Thomas Barber filed correspondence stating that he did not wish to be a party to this matter. On July 9, 2004, this Court issued an order dismissing him from the cause.

- 6. A prehearing conference was held on August 3, 2004. The Barwicks attended. No other Petitioner attended the conference. On August 5, 2004, a Notice of Proposed Default was issued to Dianne Luke. She responded to said Notice and the proposed default was set aside.
- 7. A hearing was held on September 3, 2004. The Barwicks, IDEM and Premier Fiberglass were present.
- 8. Ms. Luke failed to appear and informed the Court via telephone that she wished to withdraw her objections to the Permit.
- 9. The Barwicks complained of the odor of the styrene emissions from the Facility and questioned the procedure used to determine emissions. However, the Barwicks failed to present any evidence that proved that the Facility was not in compliance with the appropriate emissions limits established in the Permit. Nor did the Barwicks present any evidence that IDEM had failed to comply with any applicable law or regulation in issuing the permit renewal.
- 10. Premier Fiberglass ("Premier") qualified Ms. Teri Schenk as an expert. Ms. Schenk presented evidence regarding the following facts and this Court finds as follows:
 - (a) Premier is in compliance with all applicable laws and regulations;
 - (b) Premier has changed its spray operations to non-atomized spray equipment that reduced its emissions.
 - (c) Premier properly notified the IDEM of this modification.
- 11. The IDEM presented evidence regarding the following facts and this Court finds as follows:
 - (a) There has been no change in Premier's potential to emit since the Permit was initially issued.
 - (b) Numerous inspections of the Facility have failed to reveal any violations.
 - (c) Premier is in compliance with the monitoring and reporting requirements of the Permit.

Conclusions of Law

- 1. The Office of Environmental Adjudication ("OEA") has jurisdiction over the decisions of the Commissioner of the Indiana Department of Environmental Management ("IDEM") pursuant to Ind. Code § 4-21.5-7, et seq.
- 2. This is a Final Order issued pursuant to Ind. Code § 4-21.4-3-27. Findings of Fact that may be construed as Conclusions of Law and Conclusions of Law that may be construed as Findings of Fact are so deemed.
- 3. The Petitioners have the burden of proving, by a preponderance of the evidence, that the IDEM improperly issued the Permit to Premier.
- 4. The Barwicks failed to prove, by a preponderance of the evidence, that the IDEM either:
 - (1) had the authority to regulate odor or was required to consider odor in determining whether to issue the Permit, or
 - (2) improperly issued the Permit.

Order

IT IS THEREFORE ORDERED that the Petition for Administrative Review filed by T. Harold and Juanita Barwick is hereby **DENIED**, and permit # T-039-17616-00336 issued by IDEM on April 8, 2004 is hereby **AFFIRMED**.

IT IS FUTHER ORDERED the Petition for Administrative Review filed by Dianne Luke is hereby **DISMISSED**.

You are further advised that, pursuant to Indiana Code §4-21.5-5, this Final Order is subject to judicial review. Pursuant to Indiana Code §4-21.5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

IT IS SO ORDERED in Indianapolis, Indiana this 9th day of September, 2004.

Hon. Catherine Gibbs Environmental Law Judge